

OF C.A.T. (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 901 of 2009

Original Application No. 116 of 2010

Thursday, this the 18th day of August, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 901 of 2009 -

1. P.V. Krishnan, aged 50 years, S/o. (Late) Krishnan, Officiating Junior Accounts Officer, Bharat Sanchar Nigam Limited, Office of the General Manager (Telecom), Kannur, Residing at : Thalora, P.O. Kuttiyeri, Thaliparamba, Kannur Dt.
2. R. Vamadev, aged 51 years, S/o. R. Raghavan, Officiating Junior Accounts Officer, Bharat Sanchar Nigam Limited, Office of the Principal General Manager (Telecom), Calicut, Residing at : C-28, Telecom Quarters, Malaparamba, Calicut.
3. K.P. Sobhana, aged 50 years, W/o. Sreekumar, Officiating Junior Accounts Officer, Bharat Sanchar Nigam Limited, Office of the Principal General Manager (Telecom), Calicut, Residing at : Shobanam, Chevayur P.O., Calicut.
4. Asha Devi N.S., aged 48 years, W/o. Vishnu Embranthiri, Officiating Junior Accounts Officer (TRA-I), Bharat Sanchar Nigam Limited, Office of the Principal General Manager (Telecom), Calicut, Residing at : Neelamana, Naduvattom, Madathil Paramba, North Beypore, Calicut – 673 015.
5. S. Louis, aged 52 years, S/o. Stephen, Senior Telecom Operating Assistant (P), Bharat Sanchar Nigam Limited (BSNL), Office of the General Manager, Mobile Service, Trivandrum, Residing at : Bhavanam, Vallavila P.O., Kollengode, Kanyakumari Dt.
6. N.A. Vimaladevi, aged 51 years, W/o. Rajamohan, Officiating Junior Accounts Officer, Bharat Sanchar Nigam Limited, Office of the General Manager (Telecom), Palakkad, Residing at : Neeranjali, Priyadarshini Nagar, Puthur, Palakkad District.

N. Mohanan, aged 51 years, S/o. Krishnakutty Nair,
 Officiating Junior Accounts Officer,
 Bharat Sanchar Nigam Limited,
 Office of the General Manager (Telecom), Trichur, Residing at :
 No. B-303, Temple View Apartments, Sastha Road, Patturaickal,
 Trichur-22.

8. D. Sreenivasan, aged 51 years, S/o. Doraisamy,
 Officiating Junior Accounts Officer, Bharat Sanchar Nigam
 Limited, Office of the Chief General Manager (Telecom),
 Ernakulam, Residing at : No. 6/1748, B-1, First Floor,
 Lakshman Apartments, Thekkemadom Street, Palace Road, Kochi-2.
9. Prameela Bai K.K., aged 46 years, W/o. Ravi, Officiating Junior
 Accounts Officer, Bharat Sanchar Nigam Limited, Office of the
 General Manager (Telecom), Ernakulam, Residing at : Marottical,
 South Chellanam, Kochi-8.
10. Sajan Varkey, aged 36 years, S/o. K.C. Varkey, Officiating Junior
 Accounts Officer (Mobile), Bharat Sanchar Nigam Limited, Office
 of the General Manager (Telecom), Alappuzha, Residing at :
 Kaithara House, Near YWCA,
 Alappuzha. Applicants

2. Original Application No. 116 of 2010 -

Annamma Mathew, aged 42 years, W/o. Jacob Mathew,
 Officiating Junior Accounts Officer, Bharat Sanchar Nigam
 Limited, Thiruvalla, Residing at : Koical Kandathil, House No. 60,
 KSHB STG. II, Thiruvalla R.S.P.O. Applicant

(By Advocate – Mr. T.C. Govindaswamy in both OAs)

V e r s u s

1. Union of India, represented by the Secretary to the Government
 of India, Ministry of Communications, (Department of Tele-
 communications), New Delhi.
2. The Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd,
 New Delhi.
3. The Chief General Manager, (Telecom), Bharat Sanchar Nigam
 Ltd, Kerala Circle, Trivandrum. Respondents
 in both the OAs

**[By Advocates – Mr. S. Jamal, ACGSC (R1 in OA 116/10) &
Mr. T.C. Krishna (R2&3 in both OAs &
for R1 in OA 901/02)]**

These applications having been heard on 18.8.2011, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

Both the above applications raise common questions, facts and law. Hence, they are considered together and disposed of by this common judgement.

2. For the purpose of convenience we refer to the facts as stated in OA No. 901 of 2009. Applicants are holding substantive post of Senior Telecom Operations Assistant (Phones)/Senior Telecom Operative Assistant (General) officiating as Junior Accounts Officers (in short JAOs). For promotion to the post of JAO the applicants were required to pass an examination as prescribed by the Department. The examination consists of two parts Part-I and Part-II. Applicants have qualified Part-I examination but they have not passed the Part-II examination as yet. When BSNL came into existence all the employees opted to come over to the service of BSNL and thus became employees of BSNL. On the formation of BSNL they promulgated a new rule of 2001. A copy of which is marked as Annexure A-2. By the aforesaid rule the posts of JAOs were upgraded to the executive cadre. As per the new recruitment rules Part-I examination was dispensed with and instead a screening test was conducted. Those who passed in the screening test could appear in the Part-II examination. According to the

applicants, the JAO Part-I test is more rigorous and they have passed this examination and they cannot be treated alike to those who passed the screening test and even though they have not passed the Part-II examination they should be given relaxation from appearing in the Part-II examination and declare them as having acquired the necessary qualification for promotion to the post of JAO or in the alternative for a direction to hold a separate examination. However, in the meantime in Part-II examination many of the applicants appeared and applicants Nos. 2, 4, 6, 9 & 10 in OA No. 901 of 2009 have passed the examination. The remaining applicants in both these OAs have not passed the examination. They seek to quash the Annexures A-4, A-5 and A-6 and to direct the respondents to consider them for regular absorption as JAO after considering their long years of officiating service and taking into effect the fact that they have already passed the Part-I examination.

3. Annexure A-4 is a notification dated 12.10.2004 by which on introduction of the new rules, the department thought it appropriate to give one time relaxation for candidates who have passed Part-I examination so as to enable them to appear for the Part-II examination without undergoing the screening test. It is not known in what manner Annexure A-4 will adversely affect the applicants' conditions of service. However, many of the applicants have been benefited by Annexure A-4 by getting a chance to appear in the Part-II examination without undergoing the screening test as included by the new recruitment rules. Further Annexure A-4 was issued as early as in 2004 and the challenge made against Annexure A-4 is only in 2009 that too

on flimsy grounds.

4. Annexure A-5 is a notification dated 4th August, 2009 notifying the time table for the examination proposed to be held. But the date fixed for examination has since been changed by the Department themselves later, as such challenge against Annexure A-5 no longer subsist.

5. Annexure A-6 is a notification dated 9.9.2009 making certain clarifications to the doubts raised therein. One of such doubt is as per the recruitment rules educational qualification is graduation from recognized university but as per letter dated 12.10.04, minimum education qualification was taken as +2 for JAO Part I candidates. Hence, what is the educational qualification for JAO Part II exam. It was clarified that JAO Part I/Screening test qualified candidates are eligible for appearing in the JAO-II examination.

6. In the reply statement filed by the respondents they have stated that the JAO Recruitment Rules of 1977 was framed and issued by the combined Department of Post & Telegraph for more than 30 years ago and it was in vogue only up to 22nd December, 1986, the date on which another recruitment rules namely the Junior Accounts Officers Service Telecom Wing (Group C) Recruitment Rules, 1986 came into force. The said rule also became non-existent and inoperative on 31.8.2001 when the JAO Recruitment Rules, 2001 framed and issued by the BSNL came into existence. As per the existing rules there is no provision for granting

automatic promotion or to regularize the services of officiating JAOs to the cadre of JAO on regular basis. However, getting promotion to the post of JAO, the candidates have to appear for the departmental examination, satisfying eligibility conditions and also to qualify in the examination in JAO Part -I and JAO Part-II. After the formation of the BSNL with a view to tone up the efficiency in services certain changes were made by the competent authority to improve the quality of manpower of the organization and many posts were upgraded. JAO is one of the cadres upgraded and it is an executive cadre. The scale of pay of JAO was raised and the entry level for outside recruitment qualification was raised to AICWA/CS and M.Com. Changes were also reflected in the departmental quota as well. The educational qualification was prescribed as Graduation. That was necessitated to commensurate with the raised status and raised pay of the post. The scheme and syllabus approved for 40% JAO internal examination and 10% JAO internal examination were circulated by the BSNL Corporate Office. A copy of the same is R1(c). After issuance of R1(c), representations were received from various associations and candidates sought relaxation for appearing in the JAO examination against 40% departmental quota. After considering the same the department took a policy decision to give one chance for all such persons by conducting the examination in the 40% quota under the old syllabus in relaxed standards which was uniformly applied to all officials belonging to the non-executive categories of the employees who fulfil the eligibility condition. Modified examination was held on 12.10.2004. Annexure R1(d) produced in this case is Annexure A-4 in the OA. Screening test for the promotion of JAO Part-I

was conducted in Kerala Circle on 27.5.2007 and 763 candidates were qualified in the same. In order to fill up 172 vacancies in the cadre of JAO, the Kerala Circle has notified JAO Part-II exam in pursuance of BSNL Corporate office letter No. 10/2/2007-DE, dated 4.8.2009. It was further notified that there would not be any separate examination to those candidates who have got exemption in certain subject and they are also eligible to appear for this examination. Annexure R1(f) produced is Annexure A-6 in the OA. The results of the examination was subsequently published and 57 candidates were declared as successful. Applicants Nos 2, 4, 6, 9 & 10 were successful in the examination. Annexure R1(g) is a copy of the proceeding. It is stated that framing of rules and making changes thereto fall within the domain of the executive authority as supported by various decisions. They placed reliance on the decision of the Hyderabad Bench of this Tribunal in OA No. 644 of 2009. Therefore, the rejection of the applicants' request for further relaxation cannot be sustainable. R1(h) is the copy of the order passed in this regard. They also placed reliance on the decision of the Lucknow Bench of the Hon'ble High Court of Allahabad in WP (C) No. 2696 of 2004 wherein it is observed that it is obvious that the posts of JAO will be required to be filled up by the employer BSNL. If suitable persons are not available who can reach the minimum qualification prescribed, it will be for the BSNL to consider whether minimum marks should be relaxed or not. However, if persons are available for promotion who secure the minimum marks prescribed, there is no reason why this Court should impose upon BSNL to lower the promotion criteria. The judgement is produced as Annexure R1(i).

7. We have heard the learned counsel for the applicants and the learned counsel appearing for the respondents and perused the materials made available on record.

8. The challenge made to Annexure A-4 even while stating the facts have been answered above. Framing of recruitment rules on formation of the BSNL certainly falls in the domain of the new employer. It must be remembered that the new recruitment rules shall apply to all vacancies which arose subsequently. Admittedly the applicants at the relevant time had only passed Part-I examination and unless Part-II examination is also passed they have not acquired the required qualification for promotion to the post of JAO. Subsequently certain changes were brought out in the new recruitment rules on up-gradation of the post of JAO to that of executive standard. The qualifications prescribed prior to the up-gradation cannot be the same and commensurate with the status and position of the JAO after up-gradation. Hence, the minimum qualification required to be possessed for holding the post was rightly increased. The Part-I examination was dispensed with and substituted by a screening test. The same cannot be said to be invalid or arbitrary. As a matter of fact those who have passed the Part-I examination had a one time chance to appear in the Part-II examination by virtue of Annexure A-4 proceedings. However the applicants had also appeared for the examination and if successful therein, they would have a chance of being promoted to the next higher post. It cannot be said that such examination as a matter of course should be conducted once again and Courts cannot impose such conditions on the

executive to conduct such examination with a relaxed standard. Admittedly when new recruitment rules have come into force on which there is no challenge, the applicants have to satisfy the qualification as prescribed in the new recruitment rules. Court cannot compel an executive to conduct a separate examination for those who passed the Part-I examination prior to the introduction of the new recruitment rules. It is purely a policy matter and the executive has given one chance to all and it is not the domain of the Court to direct to conduct such examination under the relaxed standards as rightly held by the coordinate bench of this Tribunal in Hyderabad.

9. In the result there is no merit in the contentions raised in this OA. Accordingly, both the OAs are dismissed. No order as to costs.

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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